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91-1264

No._____

Supreme Court, U.S.
FILED
DEC 26 1991
OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1991

Richard C. Soehngen,

Petitioner,

v.

Merit System Protection Board,

Respondent.

APPENDICES

VOLUME IV OF V VOLUMES

Richard C. Soehngen
Suite #100
8094 Rolling Road
Springfield, VA 22153
(703) 720-0315

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APPENDIX J.

5 USCS § 7511 (a)(1)(B)

"employee means--
... a preference eligible in an Executive agency in the excepted service, and a preference eligible In the United States Postal Service or the Postal Rate Commission, who has completed 1 year of current continuous service in the same or similar positions;"

APPENDIX K.

5 USCS § 4303(e)

"... any employee who is a preference eligible or is in the competitive service and who has been reduced in grade or removed under this section is entitled to appeal the action to the Merit Systems Protection Board under section 7701 of this title [5 USCS § 7701]"

5 USCS § 7513. Cause and procedure

(a) Under regulations prescribed by Office of Personnel Management, an agency may take an action covered by this subchapter [5 USCS §§ 7511 et seq.] against an employee only for such cause as will promote the efficiency of the service.

(b) An employee against whom an action is proposed is entitled to— (1) at least 30 days' advance written notice, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, stating the specific reasons for the proposed action ...

II. DETERMINATION TO TAKE ADVERSE ACTION

A. General Considerations

10. **Generally**

Congress has forbidden agency to take adverse actions against preference eligible employees except for cause which will promote efficiency of service, and in such action it has provided employee with right to notice and hearing.

APPENDIX L.

38 U.S.C.S.

§ 2011. **Definitions**

As used in this chapter [38 USCS §§ et seq.]—

(1) The term "special disabled veteran" means (A) a veteran who is entitled to compensation under laws administered by the Veterans' Administration for a disability rated at 30 percent or more, or (B) a person who was discharged or released from active duty because of a service-connected disability.

(3) The term "disabled veteran" means (A) a veteran who is entitled to compensation under laws administered by the Veterans' Administration or (B) a person who was discharged or released from active duty because of a service-connected disability.

(4) The term "eligible veteran" means a person who (A) served on active duty for a period of time of more than 180 days and was discharged or released therefrom with other than a dishonorable discharge, or (B) was discharged or released from active duty because of a service-connected disability.

(5) The term "department or agency" means any agency of the Federal Government or District of Columbia, including any Executive agency as defined in section 105 of title 5 [5 USCS].

§ 2014. **Employment within the Federal Government**

(a) It is the policy of the United States and the purpose of this section to promote the maximum of employment and job advancement opportunities within the Federal Government for qualified disabled veterans and veterans of the Vietnam era.

(b)(1) To further the policy stated in subsection (a) of this section, veterans of the Vietnam era shall be eligible, in accordance with regulations which the Office of Personnel Management shall prescribe, for veterans readjustment appointments, and for subsequent career-conditional appointments...

(c) Each department, agency, and instrumentality in the executive branch shall include in its affirmative action plan for the hiring, placement, and advancement of handicapped individuals in such department, agency or instrumentality as required by section 501(b) of the Rehabilitation Act of 1973 (29) U.S.C. 791(b) [29 USCS § 791(b)], a separate specification of plans (in accordance with regulations which the Office of Personnel Management shall prescribe in consultation with the Administrator, the Secretary of Labor, and the Secretary of Health, Education, and Welfare, consistent with the purposes, provisions, and priorities of such Act) to promote and carry out such affirmative action with respect to disabled veterans in order to achieve the purpose of this section.

(d) The Office of Personnel Management shall be responsible for the review and evaluation of the implementation of this section and the activities of each such department, agency, and instrumentality to carry out the purpose and provisions of this section. The Office shall periodically obtain and publish (on at least a semiannual basis) reports on such implementation and activities from each such department, agency, and instrumentality, including specification of the use and extent of appointments made under subsection (b) of this section and the results of the plans required under subsection (c) of this section. Each report under the preceding sentence shall include in the specification of the use and extent of appointments made under subsection (b) of this section the following information (shown for all veterans and separately for veterans described in subsection (b)(1)(C) of this section and other veterans):

(1) The number of appointments made under such subsection since the last such report and the grade levels in which such appointments were made.

(2) The number of individuals receiving appointments under such subsection whose appointments were converted to career conditional appointments, or whose employment under such an appointment has terminated, since the last such report, together with a complete listing of categories of causes of appointment terminations and the number of such individuals whose employment has terminated falling into each such category.

(3) The number of such terminations since the last such report that were initiated by the department, agency, or instrumentality involved and the number of such terminations since the last such report that were initiated by the individual involved.

(4) A description of the education and training programs in which individuals appointed under such subsection are participating at the time of such report.

(e) The Office of Personnel Management shall submit to the Congress annually a report on activities carried out under this section, except that, with respect to subsection (c) of this section, the Office may include a report of such activities separately in the report required to be submitted by section 501(d) of the Rehabilitation Act of 1973 (29 U.S.C. 791(d) [29 USCS § 791(d), regarding the employment of handicapped individuals by each department, agency, and instrumentality.

(f) Notwithstanding section 2011 of this title [38 USCS § 2011], the terms "veteran" and "disabled" as used in subsection (a) of this section shall have the meaning provided for under generally applicable civil service law and regulations.

APPENDIX M.

Section 2-8 of Chapter 362 Federal Personnel Manual

"The Schedule A appointment of a Presidential Management Intern expires at the end of the 2-year internship period. At that time, the employing agency may, with no break in service, convert the intern to the competitive service or extend the internship with prior approval from OPM (see section 2-6). If neither of those actions is taken, the PMI appointment terminates. Interns are subject to their agencies' policies and procedures regarding budget constraints, staffing patterns and/or reduction in force. **For preference eligibles as defined in 5 U.S.C. § 7511 (a)(1)(B), removal actions are subject to the requirements for actions based on unacceptable performance provided at 5 U.S.C.§ 4303(e) or those relating to adverse actions provided at 5 U.S.C. § 7513. An agency may not remove an intern based upon a prohibited personnel practice listed in 5 U.S.C.**

Termination actions should be consistent with the objectives of the program to select, develop and retain for the Federal Service outstanding employees for careers in public sector management. Terminations must be preceded by a full and careful review process. Agency procedures should be developed which provide for periodic review of performance, counseling, notification of adverse action rights for veterans and notification to Presidential Management Intern Program Office of the decision to terminate."

APPENDIX N.

The purpose of a performance work plan is clearly established in 5 U.S.C. § 4302. Performance-rating plans; establishment of:

> **"For the purpose of recognizing the merits of employees and their contributions to efficiency and economy in the Federal service, each agency shall establish and use one or more performance-rating plans for evaluating the work performance of its employees."**

APPENDIX O.

This appendix should contain a Performance Work Plan (PWP) for April 1, 1989 to March 31, 1990; however it was never provided.

APPENDIX P.

This appendix should contain a Performance Work Plan (PWP) for December 31, 1989 to March 31, 1990; however it was never provided.

APPENDIX Q

U.S. Department of Justice
Executive Office of Immigration Review
Office of the Chief Immigration Judge

Chief Immigration Judge

5107 Leesburg Pike
Suite 2545
Falls Church, VA 22041

February 7, 1990

MEMORANDUM FOR: Richard C. Soehngen
PMI/Program Analyst

THROUGH: Mary Ann Mohan
Assistant Chief Immigration Judge

FROM: William R. Robi >s
Chief Immmigration Judge

SUBJECT: Approval of Proposed Training Courses

The following proposed 1990 training courses are approved for your attendance:

1. Executive Briefing Seminar, OPM/PMIP, Date to be set
3. Management Practice Course DOJ, 2/26 - 3/7
5. The Management Seminar, OPM/WASC, 3/25-3/30
7. Intro to Program Evaluation, OPM/WASC, 3/13-3/17
8. Presenting Statistics Using Graphs/Charts/Tables, OPM/WASC, 6/6-6/8
10. Project Mgmt: Planning/Scheduling/Control Techniques, OPM/WASC
11. Crime in Commerce III: Information Systems: GWU, 5/15-6/20

15. Statistics in Management, OPM/WASC, 4/9-4/13

Additionally, you should plan to attend a DOJ course entitled "Team Building and Productivity" which will be held March 19-20, 1990.

Judge Mohan has advised me that you and she are developing a training course review process to evaluate specific knowledge, skill and abilities development as related to the work of the Criminal Alien Unit, which is the primary focus of this training plan. I am pleased to hear that, and look forward to reviewing the joint proposal that will be made as part of your Performance Work Plan (PWP) for the corresponding rating period.

Thank you for your attention to these matters.

Exhibit - 2a -

APPENDIX R.

This appendix should contain a Finalized Individual Development Plan (IDP); however it was not finalized with Petitioner's supervisor.

APPENDIX S

Undisputed non-existent performance rating April 1, 1989 to March 31, 1990 and undisputed non-existent performance work plane April 1, 1990 to March 31, 1991 (Third possible PWP after incidents occurred).

APPENDIX T

Department of Justice Performance Appraisal Record

Disclosure Statement

This information is personal. It must be appropriately safeguarded from improper disclosure and it should only be made available for review by appropriate management levels having a need to know.

Name of Employee: Richard C. Soehngen

Position Title. Pay Plan. Series. Grade: PMI Program Analyst, 8031, GS-11

Component: EOIR/OCIJ

Rating Period (from/to): June 20, 1990 to March 31, 1991

ACKNOWLEGEMENT OF DEVELOPMENT, DISCUSSION AND APPROVAL OF PERFORMANCE WORK PLAN

Employee Sig.: Richard C. Soehngen s>	Rating Official Sig.: Mary Ann Mohan s>	Reviewing Officials Sig.
Date: 6/20/90	Date: 6/20/90	Date:

Exhibit -1-

PART V
EMPLOYEE APPRAISAL RECORD

EMPLOYEE NAME: Richard C. Soehngen Page No. 15 of 16
COMPONENT: EOIR/OCIJ
S.S.N.: 101-40-6790 RATING PER.: 6/20/90 to 3/31/91
x Non-attorney status

ELEMENT NO.	CRITICAL/NON CRITICAL WEIGHTING	JOB ELEMENT TITLE (BRIEF/CONCISE)
1	C	Performs special analytical studies
2	C	Establishes and maintains program contacts for CAP coordination purposes
3	C	Assists in development and review of systems to collect, verify and analyze caseload information.
4	C	Serves as CAP Liaison with EOIR personnel
5	NC	Assists in establishing and maintaining pro bono contacts and rosters for CAP purposes.

PARTS I-IV
PERFORMANCE WORK PLAN, PROGRESS REVIEW RECORD, PERFORMANCE ACHIEVEMENTS AND INDIVIDUAL ELEMENT RATING

EMPLOYEE NAME: Richard C. Soehngen Page 1 of 16

ORGANIZATION: Executive Office for Immigration Review
Rating Period: June 29, 1990 to March 1991

PART 1-PWP (continued)

A. JOB ELEMENT NUMBER AND TITLE (CRITICAL /NONCRITICAL / WEIGHTING, IF APPROPRIATE):
Job element no. 1:

x Critical — Performs special studies involving analytical assignments with focus on logistical and management integration. Identifies, researches and analyzes various policy and procedural issues.

❑ Noncritical — Develops written analysis and position papers for problem resolution and policy guidance implementation.

B. PERFORMANCE STANDARD(S):

OUTSTANDING — To within 90 to 100 percent accuracy, completeness, and timeliness, assists the Assistant Chief Immigration Judge in conduction special studies involving assignments with logistical and management integration. To within 90 to 100 percent accuracy, completeness, and timeliness, identifies, researches and analyzes various policy and procedural issues. To within 90 to 100 percent

accuracy, completeness, and timeliness, assists in developing written analyses and position papers to identify and resolve problem areas in the implementation of policy and/or programmatic operations.

EXCELLENT: To within 80 to 89 percent accuracy, completeness and timeliness, assists the Assistant Chief Immigration Judge in conduction special studies involving assignments with logistical and management integration. To within 80 to 89 percent accuracy, completeness and timeliness, identifies, researches and analyzes various policy and procedural issues. To within 80 to 89 percent accuracy, completeness, and timeliness, assists in developing written analyses and position papers to identify and resolve problem areas in the implementation of policy and/or programmatic operations.

FULLY SUCCESSFUL To within 70 to 79 percent accuracy, completeness, and timeliness, assists the Assistant Chief Immigration Judge in conduction special studies involving assignments with logistical and management integration. To within 70 to 79 percent accuracy, completeness, and timeliness, identifies, researches and analyzes various policy and procedural issues. To within 70 to 79 percent accuracy, completeness, and timeliness, assists in developing written analyses and position papers to identify and resolve

	problem areas in the implementation of policy and/or programmatic operation.
MINIMALLY SUCCESSFUL	To within 60 to 69 percent accuracy, completeness, and timeliness, assists the Assistant Chief Immigration Judge in conducting special studies involving assignments with logistical and management integration. To within 60 to 69 percent accuracy, completeness, and timeliness, identifies, researches, and analyzes various policy and procedural issues. To within 60 to 69 percent accuracy, completeness, and timeliness, identify and resolve problem areas in the implementation of policy and/or programmatic operation.
UNACCEPTABLE	With less than 60 percent accuracy, completeness, and timeliness, assists the ACIJ in conduction special studies involving assignments with logistical and management integration. With less than 60 percent accuracy, completeness, and timeliness, assists in developing written analyses and position papers to identify and resolve problem areas in the implementation of policy and/or programmatic operations.

EMPLOYEE NAME: Richard C. Soehngen Page 4 of 16

ORGANIZATION: Executive Office for Immigration Review
Rating Period: June 29, 1990 to March 1991

PART 1-PWP (continued

A. JOB ELEMENT NUMBER AND TITLE (CRITICAL /NONCRITICAL / WEIGHTING, IF APPROPRIATE):
Job element no. 2:

x Critical — Assists in establishing and maintaining program contact with outside agencies, individuals, and organizations to effectively coordinate and review criminal alien hearing programs and caseload

❑ Noncritical — operations.

B. PERFORMANCE STANDARD(S):

OUTSTANDING — To within 90 to 100 percent accuracy, completeness, and timeliness, assists the Assistant Chief Immigration Judge in establishing contact with outside agencies, individuals and organizations to effectively coordinate operations. To within 90 to 100 percent accuracy, completeness, and timeliness, insures the Assistant Chief Immigration Judge is aware of concerns addressed by outside agencies, individual and organizations.

EXCELLENT: — To within 80 to 89 percent accuracy, completeness and timeliness, assists the Assistant Chief Immigration Judge in the establishment and maintenance of contacts with outside agencies, individuals and organizations to effectively coordinate and

review criminal alien hearing programs and caseload operations. To within 80 to 89 percent accuracy, completeness and timeliness, insures the Assistant Chief Immigration Judge is aware of concerns addressed by outside agencies, individuals and organizations.

FULLY SUCCESSFUL

To within 70 to 79 percent accuracy, completeness, and timeliness, assists the Assistant Chief Immigration Judge in the establishment and maintenance of contacts with outside agencies, individuals and organizations to effectively coordinate and review criminal alien hearing programs and caseload operations. To within 70 to 79 percent accuracy, completeness, and timeliness, insures that the Assistant Chief Immigration Judge is aware of concerns addressed by outside agencies, individuals, and organizations.

MINIMALLY SUCCESSFUL

To within 60 to 69 percent accuracy, completeness, and timeliness, assists the Assistant Chief Immigration Judge in the establishment of and maintenance of contacts with is aware of concerns addressed by outside agencies, individuals, and organizations to effectively coordinate and review criminal alien hearing programs and caseload operations. To within 60 to 69 percent accuracy, completeness, and timeliness, insures that the Assistant Chief Immigration Judge is aware of concerns addressed by outside agencies, individuals, and organizations.

UNACCEPTABLE	With less than 60 percent accuracy, completeness, and timeliness, assists the ACIJ in the establishment and maintenance or contacts with outside agencies, individuals, and organizations to effective coordinate and review criminal alien hearing programs and caseload operations. With less than 60 percent accuracy, completeness, and timeliness, insures that the Assistant Chief Immigration Judge is aware of concerns addressed outside agencies, individuals, and organizations.

EMPLOYEE NAME: Richard C. Soehngen Page 7 of 16

ORGANIZATION: Executive Office for Immigration Review
Rating Period: June 29, 1990 to March 1991

PART 1-PWP (continued

A. JOB ELEMENT NUMBER AND TITLE (CRITICAL /NONCRITICAL / WEIGHTING, IF APPROPRIATE):
Job element no. 3:

x Critical — Assists in development of systems to collect, verify and analyze caseload information and review collected data on a regular basis. Sets up ad maintains integrated reports, and major program.

❑ Noncritical — operations.

B. PERFORMANCE STANDARD(S):

OUTSTANDING — To within 90 to 100 percent accuracy, completeness, and timeliness, assists in the development of systems to collect, verify, and analyze caseload information and reviews collected data on a regular basis. To within 90 to 100 percent accuracy, completeness, and timeliness, assists in setting-up and maintenance of integrated reports and files.

EXCELLENT: — To within 80 to 89 percent accuracy, completeness and timeliness, assists in the development of systems to collect, verify, and analyze caseload information and reviews collected data on a regular basis. To within 80 to 89 percent accuracy, completeness and timeliness, assists in

	setting-up and maintenance of integrated reports and files.
FULLY SUCCESSFUL	To within 70 to 79 percent accuracy, completeness, and timeliness, assists in the development of systems to collect, verify, and analyze caseload information and reviews collected data on a regular basis. To within 70 to 79 percent accuracy, completeness, and timeliness, assists in setting-up and maintenance of integrated reports and files.
MINIMALLY SUCCESSFUL	To within 60 to 69 percent accuracy, completeness, and timeliness, assists in the development of systems to collect, verify, and analyze caseload information and reviews collected data on a regular basis. To within 60 to 69 percent accuracy, completeness, and timeliness, assists in the setting-up and maintenance of integrated reports and files.
UNACCEPTABLE	With less than 60 percent accuracy, completeness, and timeliness, assists in the development of systems to collect, verify, and analyze caseload information and never reviews collected data on a regular basis. With less than 60 percent accuracy, completeness, and timeliness assists in the setting-up and maintenance of integrated reports and files.

EMPLOYEE NAME: Richard C. Soehngen Page 9 of 16

ORGANIZATION: Executive Office for Immigration Review
Rating Period: June 29, 1990 to March 1991

PART 1-PWP (continued

A. JOB ELEMENT NUMBER AND TITLE (CRITICAL /NONCRITICAL / WEIGHTING, IF APPROPRIATE):
Job element no. 4:

x Critical

❑ Noncritical

Serves as liaison with management officers, immigration judges, interpreter clerks, and other EOIR personnel involved with implementation of provisions of the Criminal Alien Program to insure logical and coordinated policy directives, logistics and other activities.

B. PERFORMANCE STANDARD(S):

OUTSTANDING — To within 90 to 100 percent accuracy, completeness, and timeliness, maintains appropriate liaison level with management officers, immigration judges, interpreter clerks and other EOIR personnel involved with the implementation of provisions of the Criminal Alien Program. To within 90 to 100 percent accuracy, completeness, and timeliness, insures that logical and coordinated policy directives, logistics and other activities are achieved.ed reports and files.

EXCELLENT: — To within 80 to 89 percent accuracy, completeness and timeliness, maintains appropriate liaison level with management officers, immigration judges, interpreter

	clerks and other EOIR personnel involved with the implementation of provisions of the Criminal Alien Program. To within 80 to 89 percent accuracy, completeness and timeliness, insures that logical and coordinated policy directives, logistics and other activities are achieved.
FULLY SUCCESSFUL	To within 70 to 79 percent accuracy, completeness, and timeliness, maintains appropriate liaison level with management officers, immigration judges, interpreter clerks and other EOIR personnel involved with the implementation of provisions of the Criminal Alien Program. To within 70 to 79 percent accuracy, completeness, and timeliness, insures that logical and coordinated policy directives, logistics and other activities are achieved.
MINIMALLY SUCCESSFUL	To within 60 to 69 percent accuracy, completeness, and timeliness, maintains appropriate liaison level with management officers, immigration judges, interpreter clerks and other EOIR personnel involved with the implementation of provisions of the Criminal Alien Program. To within 60 to 69 percent accuracy, completeness, and timeliness, insures that logical and coordinated policy directives, logistics and other activities are achieved.
UNACCEPTABLE	With less than 60 percent accuracy, completeness, and timeliness, maintains appropriate liaison level with management

officers, immigration judges, interpreter clerks and other EOIR personnel involved with the implementation of provisions of the Criminal Alien Program. With less than 60 percent accuracy, completeness, and timeliness insures that logical and coordinated policy directives, logistics and other activities are achieved.

EMPLOYEE NAME: Richard C. Soehngen Page 12 of 16

ORGANIZATION: Executive Office for Immigration Review
Rating Period: June 29, 1990 to March 1991

PART 1-PWP (continued

A. JOB ELEMENT NUMBER AND TITLE (CRITICAL /NONCRITICAL / WEIGHTING, IF APPROPRIATE):

Job element no. 5: Assists in establishing a pro bono roster for state and federal hearing locations identified under the criminal alien program.

❑ Critical

x Noncritical

B. PERFORMANCE STANDARD(S):

OUTSTANDING To within 90 to 100 percent accuracy, completeness, and timeliness, maintains appropriate liaison level with management officers, immigration judges, interpreter clerks and other EOIR personnel involved with the implementation of provisions of the Criminal Alien Program. To within 90 to 100 percent accuracy, completeness, and timeliness, insures that logical and coordinated policy directives, logistics and other activities are achieved.ed reports and files.

EXCELLENT: To within 80 to 89 percent accuracy, completeness and timeliness, provides appropriate level of contact, assistance, and follow-up in developing and maintaining a pro bono program for criminal alien hearing sites.

FULLY

SUCCESSFUL	To within 70 to 79 percent accuracy, completeness, and timeliness, provides appropriate level of contact, assistance, and follow-up in developing and maintaining a pro bono program for criminal alien hearing sites.
MINIMALLY SUCCESSFUL	To within 60 to 69 percent accuracy, completeness, and timeliness, provides appropriate level of contact, assistance, and follow-up in developing and maintaining a pro bono program for criminal alien hearing sites.
UNACCEPTABLE	With less than 60 percent accuracy, completeness, and timeliness, provides appropriate level of contact, assistance, and follow-up in developing and maintaining a pro bono program for criminal alien hearing sites.